

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RHONDA M. HARRELLE and DEPARTMENT OF THE ARMY,  
HEADQUARTERS, U.S. ARMY, PACIFIC, Fort Shafter, HI

*Docket No. 01-440; Submitted on the Record;  
Issued December 27, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On April 5, 2000 appellant, then a 40-year-old secretary, filed an occupational disease claim, alleging that physical, verbal and psychological abuse and harassment led to extreme stress and emotional anguish. She stopped work on April 10, 2000. In support of her claim appellant submitted several statements in which she indicated that in the spring of 1999 she was given new duties by her supervisor, Richard O. Young and requested training but was denied; was asked to record inaccurate time for another employee, Evangeline R.K. Kaku; that her rating of record was delayed; that her birthday was ignored; and that her office furniture was inappropriately requested. She further indicated that on January 7, 1999 she was deliberately slammed with a refrigerator door by Sergeant Susan Murray and that in March or April 1999 she was deliberately bumped with a steel hand truck by Sgt. Murray.<sup>1</sup> She further stated that on May 26, 1999 she was yelled and screamed at, falsely accused and threatened by Major Mary Martin.<sup>2</sup> She stated that on September 10, 1999 she was verbally abused by Sgt. Murray. She stated that her complaints regarding the above were ignored and that she had filed a formal complaint with the Equal Employment Opportunity Commission (EEOC). She further stated that she received a change in leave policy, formal reprimands and suspensions from the employing establishment.

The employing establishment provided a number of statements which countered appellant's allegations. These included a report dated May 27, 1999 in which Major Martin described the May 26, 1999 incident, stating that appellant would not answer her questions. Major Martin also provided an October 6, 1999 statement in which she advised that appellant hit

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<sup>1</sup> Appellant stated that the first incident was witnessed by Mr. Young and the second by David W. Hover.

<sup>2</sup> Appellant stated that this incident was witnessed by Jesse E. Blackwell.

her in the back with a door, that she did not know if appellant did it on purpose but that she was being harassed by appellant. In a September 10, 1999 statement, Sgt. Murray described several incidents that occurred between appellant and her and in a report also dated September 10, 1999, Major Denise R. Giles described a personality conflict between appellant and Sgt. Murray. In an April 11, 2000 statement, Roger I. Engebretson indicated that after he began work at the employing establishment on March 17, 2000 and he witnessed appellant doing nothing. He stated that she ignored everyone and he had to do his own clerical work. In an April 12, 2000 statement, Ms. Kaku conceded that she did not have a good working relationship with appellant and advised that from February to April 2000 appellant did little work.

Mr. Hover, procurement analyst, provided an April 13, 2000 statement in which he acknowledged witnessing Mr. Young giving appellant a memorandum on January 25, 2000 which he requested that she sign. Mr. Hover stated that appellant refused to sign the memorandum. He further stated:

“[Appellant’s] demeanor during this event was very professional and unemotional; He explained why he was giving her the memorandum and remained calm and courteous during his conversation with [appellant]. I would note that I have never witnessed Mr. Young raise his voice to any ... employee, and that he always maintains a high degree of professionalism in his dealings with employees.”

Mr. Hover continued that for the past several months appellant had done little general office work other than opening mail and preparing time cards. He advised that because the filing was not done, problems were caused in locating information and that her lack of work increased his workload. Mr. Hover noted that on April 10, 2000 appellant had not reported for work and her personal effects had been removed from her work area.

In a May 17, 2000 statement, Paula A. Torres, procurement analyst, advised that in May 1999 she had a disagreement with appellant regarding filing and that after that appellant would not speak to her and would stare into space in a “deliberate, unremitting” manner.

Mr. Young, appellant’s supervisor who was assistant chief of staff for acquisition management (ACSAM), provided a statement in which he reviewed appellant’s contentions. He stated that appellant had been an excellent employee for about 10 months and that in September 1999 she filed an EEOC complaint for 4 incidents that occurred from March to September, 1999. He further stated:

“In Dec[ember 19]99, in response to an email I sent her, [appellant] advised me that she was not performing one of her assigned job duties -- records management activities, and that she did not intend to perform those duties ever. Her performance continued to deteriorate and I was forced to take progressive disciplinary action. It got to the point that she refused to perform any tasks for me, her supervisor, but would perform tasks for other employees in the office and did a good job assisting them.”

The record also contains several statements from Mr. Blackwell, procurement analyst. On May 28, 1999 he stated that appellant was the best secretary the agency had. Mr. Blackwell described an incident that occurred between Major Martin and him on May 26, 1999 in which Major Martin yelled at him about appellant's inappropriate behavior. In a March 16, 2000 statement, Mr. Blackwell advised that he had not witnessed any "invidious or intimidating" incidents regarding appellant. He further stated that appellant's job performance had declined to the point that she normally did nothing but sit at her desk with her palms on the table although she would provide assistance to him when asked. Mr. Blackwell also discussed a rearrangement of office furniture that disturbed appellant. In a May 11, 2000 statement, Mr. Blackwell stated that since about February 10, 2000 appellant had essentially done nothing at work except help him. He witnessed an occasion in which she ignored Mr. Young and concluded, "I have observed no situation where I would consider that there were impediments, physical or otherwise (being personal relationships) to her doing her assigned tasks that were not self-imposed."

In an email dated December 13, 1999, appellant stated:

"Mr. Young, I do not intend to participate in the ACSAM inspection now, later or ever. Also, since the most recent harassment incident in the year-long series of repeated and ugly incident[ts] I've suffered on September 10, 1999, here in ACSAM, I have not, will not, and do not ever intend to make any further efforts whatsoever to prepare or participate in the ACSAM inspection.

"You and your organization no longer deserve my efforts, energy, enthusiasm, thoroughness or diligence in completing my tasks. I [have] felt this way since September 10th following the latest harassment and I will never feel any different about you or your organization USARPAC ACSAM and I truly wish and pray each and every day that I was not here. I do not enjoy working with you and you do not deserve to have a proud, carding, hard-working secretary like me. I do not deserve to be treated as I have been here and I do [not] appreciate my having enthusiastic efforts die-tracked by harassment and physical and verbal abuse while trying hard to be the best secretary that I could be.

"In light of all that has occurred, I really wish you'd stay away from me and interact with me as less [sic] as possible. I wish I were [not] here working with you anymore."

In a December 21, 1999 email, Mr. Young warned appellant regarding inappropriate behavior because she had conducted herself "in an insubordinate, disrespectful manner and refused to perform assigned duties, *i.e.*, records management functions. He specifically mentioned the ACSAM inspection. On January 25, 2000 appellant was issued a formal written reprimand for failure to follow instructions, In memoranda dated February 24 and March 16, 17 and 20, 2000, Mr. Young apprised appellant regarding her failure to follow instructions, On May 12, 2000 a notice of proposed suspension was sent to appellant and on June 5, 2000 appellant was suspended for 14 days for failure to follow instructions and failure to perform assigned duties.

In a May 19, 2000 decision, there was a finding of no discrimination regarding appellant's EEO complaint.

The record also contains appellant's requests for reassignment/transfer dated October 14, 1999 and April 7, 2000 and appellant's performance appraisal for the period October 5, 1998 to December 31, 1999 that was issued on May 3, 2000.

By decision dated November 3, 2000, the Office of Workers' Compensation Programs denied the claim, finding that the evidence of record failed to establish that the claimed injury occurred in the performance of duty. The instant appeal follows.

The Board finds that appellant has not established that she sustained employment-related stress.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>3</sup> Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.<sup>4</sup> On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.<sup>5</sup>

The disability is not covered when it results from such factors as an employee's frustration from not being permitted to work in a particular environment or to hold a particular position or secure a promotion. Disabling conditions resulting from an employee's feelings of job insecurity, or the desire for a different job do not constitute personal injury sustained in the performance of duty within the meaning of the Act. In these cases, such feelings are considered to be self-generated by the employee as they arise in situations not related to assigned duties.<sup>6</sup> While, as a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act,<sup>7</sup> error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing

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<sup>3</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *See Donald E. Ewals*, 45 ECAB 111 (1993).

<sup>7</sup> *See Norman A. Harris*, 42 ECAB 923 (1991).

establishment acted unreasonable in the administration of a personnel matter, may afford coverage.<sup>8</sup> To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>9</sup>

Regarding appellant's allegations, as a general rule, a claimant's reaction to administrative or personnel matters fall outside the scope of coverage of the Act. The fact that she filed an EEO complaint, by itself, would not establish that workplace harassment or unfair treatment occurred<sup>10</sup> and in this case, the only decision regarding her EEOC complaint is that dated May 19, 2000 in which a finding of no discrimination was made. Furthermore, allegations of harassment based on the denial of leave are not compensable under the Act absent evidence of error or abuse in the administration of the personnel matter.<sup>11</sup> Likewise, while the assessment of conduct is generally related to the employment, it is an administrative function of the employer, not a duty of the employee and will not be a compensable employment factor absent error or abuse by the employing establishment. In this case, appellant did not submit any evidence showing that the official reprimand and suspension regarding failure to follow instructions were unwarranted or constituted error or abuse by the employing establishment.<sup>12</sup> In fact, in evidence provided by appellant, she essentially concurred with Mr. Young's statement that she had not returned to her position of record when informed to do so.

The Board has held that, absent error or abuse, assessment of work performance,<sup>13</sup> disciplinary actions,<sup>14</sup> disputes regarding leave,<sup>15</sup> inability to obtain a transfer,<sup>16</sup> the provision of training and equipment,<sup>17</sup> frustration with the policies and procedures of the employing establishment<sup>18</sup> and mere disagreement of supervisory or management action mere disagreement of supervisory or management action<sup>19</sup> are not compensable factors of employment. In this case, appellant provided nothing to substantiate her allegations and the employing establishment provided ample explanation of its actions. While the record indicates that appellant had a difficult relationship with Sgt. Murray, Majors Martin and Giles, Ms. Torres and Ms. Kaku, there

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<sup>8</sup> *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>9</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>10</sup> *See generally Alice M. Washington*, 46 ECAB 382 (1994).

<sup>11</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>12</sup> *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

<sup>13</sup> *Id.*

<sup>14</sup> *See Anne L. Livermore*, 46 ECAB 425 (1995).

<sup>15</sup> *See Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

<sup>16</sup> *See Alberta Kinlock-Wright*, 48 ECAB 459 (1997).

<sup>17</sup> *See Brian H. Derrick*, 51 ECAB \_\_\_\_ (Docket No. 98-119, issued March 29, 2000).

<sup>18</sup> *See William Karl Hansen*, 49 ECAB 140 (1997).

<sup>19</sup> *See Christophe Jolicoeur*, 49 ECAB 553 (1998).

is nothing in the record to indicate that this rose to the level of compensable error or abuse. Appellant stated that Mr. Young and Mr. Hover witnessed incidents. They, however, did not provide support for these contentions. Mr. Blackwell indicated that he was subject to a harangue by Major Martin, but he did not witness any confrontation between her and appellant. Furthermore, he indicated that he had witnessed no serious incidents regarding appellant and observed no situation that provided a reason for her not working.

The Board therefore finds that appellant has not established a compensable employment factor and, thus, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty as alleged.<sup>20</sup>

The decision of the Office of Workers' Compensation Programs dated November 3, 2000 is hereby affirmed.

Dated, Washington, DC  
December 27, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

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<sup>20</sup> As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).